

# **REQUEST FOR PROPOSAL FOR A VIRTUAL TAPE LIBRARY BACKUP SOLUTION FOR THE STATE COURT ADMINISTRATOR'S OFFICE**

## **I. REQUEST FOR PROPOSAL.**

- A. DEFINED. The State of Minnesota, State Court Administrator's Office, Information Technology Division ("STATE") is using a competitive selection process to select a vendor and a solution to provide a disk-to-disk-to-tape backup solution. This is not a bid but a request for a proposal that could become the basis for negotiations leading to a contract with a designated vendor to provide services and solution as described in this document.
- B. RIGHT TO CANCEL. THE STATE IS NOT OBLIGATED TO RESPOND TO ANY PROPOSAL SUBMITTED NOR IS IT LEGALLY BOUND IN ANY MANNER WHATSOEVER BY THE SUBMISSION OF A PROPOSAL. THE STATE RESERVES THE RIGHT TO CANCEL OR WITHDRAW THE REQUEST FOR PROPOSAL AT ANY TIME IF IT IS CONSIDERED TO BE IN ITS BEST INTEREST. IN THE EVENT THE REQUEST FOR PROPOSALS IS CANCELLED OR WITHDRAWN FOR ANY REASON, THE STATE SHALL NOT HAVE ANY LIABILITY TO ANY PROPOSER FOR ANY COSTS OR EXPENSES INCURRED IN CONNECTION WITH THIS REQUEST FOR PROPOSALS OR OTHERWISE. THE STATE ALSO RESERVES THE RIGHT TO REJECT ANY OR ALL PROPOSALS, OR PARTS OF PROPOSALS, TO WAIVE ANY INFORMALITIES THEREIN, AND TO EXTEND PROPOSAL DUE DATES.

## **II. PROJECT BACKGROUND.**

- A. It is a goal of the STATE to more efficiently create backups of their ever-increasing amount of data. Currently the STATE performs disk-to-tape backup daily, Monday through Friday, with full backups on the weekend and incremental each week night. Additionally, the STATE creates auxiliary copies of all backups Monday through Friday, for delivery to a secure off-site location. The last couple of years, with the statewide rollout of a couple of applications (we are about 50% complete), have seen an explosion of data. With the large increase in data, the method currently employed for backing up, restoring, and moving tapes to an off-site location is becoming a non-viable solution.
- B. The environment currently employed by the STATE includes an Enterprise Virtual Array (EVA) from HP, and an HP Enterprise Backup Solution (MSL5052 tape library) with four SDLT tape drives capable of backup up to 65GB/hour, per SDLT tape drive. Additionally, the STATE utilizes Galaxy backup software, version 6.1, from CommVault Systems to control the backups and restores.

- C. In the current environment the STATE no longer has enough space in the 52 slot library to hold enough tapes on weekends, and sometimes during the week, therefore it is necessary for someone to come in to manually swap tapes. Also, the STATE does not have enough slots to hold three days worth of primary copies in case it is necessary to perform a restore; hence, tapes have to be manually exported so a tape can be mounted for a restore.
- D. When problems occur within the STATE's tape backup system during the unattended third shift, backup routines are pushed into the day, and the auxiliary copies do not complete in time to be picked up by the off-site vendor.
- E. With the dramatic increase in the amount of data, the STATE needs the ability to deliver faster backup and restore times. This is also necessary to move production databases to other environments.
- F. Restores executed during the day interfere with auxiliary tape copies.

### **III. SCOPE OF EFFORT:**

The STATE is seeking proposals for Virtual Tape Libraries from vendors to address the problems described in this RRP. The proposal should be a turn-key solution including the necessary hardware, software, installation and integration with our environment, and configuration. Deliverables must include knowledge transfer to STATE staff members, customer references, and written responses to the questions submitted in the RFP.

### **IV. OBJECTIVE:**

To acquire a turn-key solution that will address the problem areas discussed in the Project Background section.

The overall goals of the project include: acquisition, installation, configuration and integration of a Virtual Tape solution into our current environment to allow us to backup our data in a much shorter timeframe than today.

### **V. PROJECT SCHEDULE.**

**Proposals must be received no later than 4:00 p.m. local (i.e. Minneapolis) time on June 15, 2006. The STATE desires** to implement the solution in August 2006,, or sooner if possible. The STATE's fiscal year runs July 1 through June 30, and the STATE wants to use fiscal FY07 (after July 1, 2006) dollars for this procurement.

## VI. SUBMISSION REQUIREMENTS.

### A. GENERAL REQUIREMENTS.

1. **Certificate of Insurance.** Each proposal shall contain acceptable evidence of compliance with the workers' compensation coverage requirements of Minn. Stat. § 176.181, subd. 2. Vendor's RFP response must include one of the following: (1) a certificate of insurance, or (2) a written order from the Commissioner of Insurance exempting you from insuring your liability for compensation and permitting him to self-insure the liability, or (3) an affidavit certifying that you do not have employees and therefore are exempt pursuant to Minn. Stat. §§ 176.011, subd. 10; 176.031; and 176.041.
2. **Affirmative Action Certification.** If the vendor's proposal exceeds \$100,000.00, the RFP response must include a completed State of Minnesota Affirmative Action Certification on the form approved by the Minnesota Department of Human Rights (current revision is dated 8/04) and is attached as a separate electronic file and document.
3. **Non-collusion Affirmation.** Vendor must complete the Affidavit of Non-collusion (Appendix I) and include it with its RFP response.
4. **Contract Terms.** The Vendor's RFP response must include the Vendor's standard contract/master services agreement including licensing, nondisclosure, and billing/invoicing procedures. The STATE'S contract terms are listed in Appendix II. No work can be started until a contract, in a form acceptable to the STATE, has been signed by all necessary parties in accordance with state court procurement and contract policies.
5. **Trade Secrets:** Vendor's RFP must provide evidence of Vendor's financial stability as an indicator of Vendor's ability to provide services irrespective of uneven cash flow, and information concerning Vendor's product roadmap/long range plans. Financial stability information and information concerning your product roadmap/long range plans can be submitted as trade secret according to the following:
  - a. the evidence-of-vendor's-financial-stability and information concerning your product roadmap/long range plans must qualify as a trade secret under Minn. Stat. § 325C.01 or as defined in the common law;
  - b. the vendor submits the trade secret information on a separate document (but as part of their complete submission) and marks the document(s) containing only the trade secret information as "confidential;"

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- c. the trade secret information is not publicly available, already in the possession of the judicial branch, or known to or ascertainable by the judicial branch from third parties.
- d. If a vendor's proposal leads to a contract, the following information will be accessible to the public: the existence of any resulting contract, the parties to the contract, and the material terms of the contract, including price, projected term and scope of work.

B. PROJECT RELATED SUBMISSION REQUIREMENTS. VENDOR'S proposal and solution MUST:

1. The Virtual Tape Library solution (disk to disk backup) must provide sustained backup and restore throughput performance of at least 1TB/hour
2. Provide benchmarks supporting performance claims
3. The solution must be certified to work with HP's Enterprise Virtual Array, and CommVault, our enterprise backup software
4. Must have a capacity of a 15TB usable storage, at a minimum, and expandable to at 45TB
5. Must be compatible with HP NSR 2402 Storage Router
6. Solution should provide a minimum of 15 simultaneous backup streams
7. Solution must be turn-key disk/software appliance
8. Must be able to recover from off-site stored tapes using CommVault and HP's MSL5052 tape library
9. Solution must provide hardware redundancy for cooling fan, power supply, drive shelves, and NIC.
10. Solution must be capable of providing Wide Area Network replication for disaster recovery purposes
11. 2GB fiber channel connectivity
12. Must have local hardware support, or spare parts available within 24 hours
13. Provide a list of customer contacts
14. Provide information for how this solution would impact our current CommVault licensing
15. Provide a timeline for the implementation
16. Provide an itemized dollar amount for hardware, software, annual maintenance and support, installation, configuration, training, travel and living or other expenses.
17. Provide written responses to the following questions:
  - i. Describe what steps would be necessary to expand the VTL for 15TB to 45TB.
  - ii. How long would it take to add capacity and create the raid groups from the receipt of the purchase order? What portion of this is the actual upgrade and configuration of the system?
  - iii. What types of drives and cartridges does your solution emulate?
  - iv. What tape libraries does the virtual tape technology emulate?
  - v. Can the system be managed remotely?

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- vi. What levels of security are provided to prevent unauthorized access?
- vii. How many systems matching your proposed solution are currently installed?
- viii. How mature is your proposed solution?
- ix. What is the warranty period for the hardware and software?
- x. What is the current product roadmap?
- xi. How will the product be enhanced in the future?

## **VII. PROPOSAL EVALUATION:**

- A. The STATE will evaluate all complete proposals received by the deadline. Incomplete proposals, late proposals, or proposals sent to any other address will not be considered. In some instances, an interview or presentation may be part of the evaluation process.
- B. The evaluation of all proposals shall be based upon deriving the “Best Value” for the Judicial Branch. “Best Value” means achieving an appropriate balance between price and other factors key to a particular procurement. A procurement that obtains a low price but does not include other necessary qualities and features of the desired product or service does not meet the “Best Value” criterion. Factors upon which the proposals will be judged include, but are not limited to, the following:
  - 1. Ability to provide the requested solution meeting the list of requirements (high weight);
  - 2. Thoroughness, quality, specificity, of responses to questions in the RFP (high weight);
  - 3. Costs, including on-going maintenance (high weight);
  - 4. Customer contacts concerning the product and vendor (high weight);
  - 5. Financial stability of the organization (high weight).

## **VIII. SUBMISSION OF PROPOSALS.**

- A. SEALED PROPOSALS AND NUMBER OF COPIES. Your proposal must be submitted in writing in a sealed envelope to:

State Court Administrator’s Office  
Information Technology Division, Attention Virtual Tape Library RFP  
Minnesota Judicial Center, Suite 145  
25 Rev. Dr. Martin Luther King Jr. Boulevard

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St. Paul, MN 55155

The submission must include four (4) paper copies and one (1) electronic (PDF) copy. No facsimile submissions will be accepted.

- B. SIGNATURES. Your proposal must be signed by, in the case of an individual, by that individual, and in the case of an individual employed by a firm, by the individual and an individual authorized to bind the firm.
- C. INK. Prices and notations must be typed or printed in ink. No erasures are permitted. Mistakes may be crossed out and corrections must be initialed in ink by the person signing the proposal.
- D. DEADLINE. Proposals must be received no later than 4:00 p.m. local (i.e. Minneapolis) time on June 15, 2006. Proposals will be opened the following day after the deadline and once opened become accessible to the public. Except for financial stability information and information concerning your product roadmap/long range plans submitted in accordance with Section VI.A.5, of this RFP, do not place any information in your proposal that you do not want revealed to the public. All documentation shipped with the proposal, including the proposal, will become the property of the STATE.
- E. LATE PROPOSALS. Late proposals will not be accepted.
- F. QUESTIONS. Questions about the RFP or the selection must be directed in writing by email to [VTL@courts.state.mn.us](mailto:VTL@courts.state.mn.us) Questions and answers will be posted on the Court's Web Site at: <http://www.courts.state.mn.us/VTLRFP> Individual court personnel are not allowed to discuss the Request for Proposal with anyone, including responders, before the proposal submission deadline
- G. SELECTION TIMELINE. The tentative selection timeline is to select a vendor to begin contract negotiations on June 21, 2006, and have a contract completed by July 1, 2006.

## APPENDIX I

### STATE OF MINNESOTA AFFIDAVIT OF NONCOLLUSION

I swear (or affirm) under the penalty of perjury:

1. That I am the Proposer (if the Proposer is an individual), a partner in the company (if the Proposer is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Proposer is a corporation);
2. That the attached proposal submitted in response to the \_\_\_\_\_ Request for Proposals has been arrived at by the Proposer independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Proposer of materials, supplies, equipment or services described in the Request for Proposal, designed to limit fair and open competition;
3. That the contents of the proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or agent (including a partner) of the Proposer and will not be communicated to any such persons prior to the official opening of the proposals; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Proposer's Firm Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX II

### STATE CONTRACT TERMS

- I. **TIME REQUIREMENTS.** The successful vendor ("CONTRACTOR") shall comply with all of the time requirements described in the contract.
- II. **CONDITIONS OF PAYMENT.** All services provided by CONTRACTOR pursuant to this contract shall be performed to the satisfaction of the State of Minnesota, State Court Administrator's Office ("STATE") as determined at the sole discretion of its authorized representative, and in accord with the CONTRACTOR'S duties set forth in section I of this contract and all applicable federal, state, and local laws, ordinances, rules and regulations. CONTRACTOR shall not receive payment for work found by the STATE to be unsatisfactory, or performed in violation of federal, state or local law, ordinance, rule or regulation.
- III. **CANCELLATION.**
  - A. The STATE may cancel this contract at any time, with or without cause, upon thirty (30) days' written notice to CONTRACTOR. If the contract is canceled under this clause, CONTRACTOR shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed.
  - B. The STATE may immediately cancel this contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Cancellation must be by written or facsimile transmission notice to CONTRACTOR. The STATE is not obligated to pay for any services that are provided after notice and effective date of termination. However, CONTRACTOR will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The STATE will not be assessed any penalty if the contract is cancelled because of a decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The STATE must provide CONTRACTOR notice of the lack of funding within a reasonable time of the STATE'S receiving that notice.
- IV. **ASSIGNMENT AND BINDING EFFECT.** CONTRACTOR shall neither assign nor transfer any rights or obligations under this contract without the prior written consent of the STATE. This contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, including any corporation or other legal entity into, by or with which CONTRACTOR may be merged, acquired or consolidated or which may purchase all or substantially all of the business assets of CONTRACTOR.



- V. **AMENDMENTS.** Any amendments to this contract shall be in writing and shall be executed by the same parties who executed the original contract, or their successors in office.
- VI. **LIABILITY.** CONTRACTOR shall indemnify, save, and hold the STATE, its representatives and employees harmless from any and all claims or causes of action, including all attorneys' fees incurred by the STATE, arising from the performance of this contract by CONTRACTOR or CONTRACTOR'S agents or employees. This clause shall not be construed to bar any legal remedies CONTRACTOR may have for the STATE'S failure to fulfill its obligations pursuant to this contract.
- A. **Intellectual Property Indemnity.** Without limiting the foregoing, CONTRACTOR shall indemnify the STATE and hold it harmless against any claim that the work performed or material provided hereunder infringes or violates the patent, copyright, or trade secret rights of any third party. CONTRACTOR shall pay any and all resulting costs, expenses (including attorney's fees), damages and/or liabilities associated with or resulting from any such claim.
- B. **Nondisclosure Indemnity.** Without limiting the foregoing, CONTRACTOR agrees to indemnify, defend and save harmless the STATE and its agents, officers and employees from and against any and all claims by Third Parties that are determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted directly and proximately from CONTRACTOR'S violation of the non-disclosure provisions hereof. The STATE shall provide CONTRACTOR with prompt notice of any claim for which indemnification may be sought hereunder and shall cooperate in all reasonable respects with CONTRACTOR in connection with any such claim. CONTRACTOR shall be entitled to control the handling of any such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing.
- VII. **STATE AUDITS.** The books, records, documents, and accounting procedures and practices of the CONTRACTOR relevant to this contract shall be subject to examination by the contracting department and the Legislative Auditor for a minimum period of six (6) years from the termination of this contract. Records shall be sufficient to reflect all costs incurred in performance of this Contract.
- VIII. **CONFIDENTIALITY, DISCLOSURE AND USE.**
- A. **General.** CONTRACTOR shall not disclose to any third party any information that is both: (1) made available by the STATE to CONTRACTOR in order to permit CONTRACTOR to perform hereunder or is created, gathered, generated or acquired in accordance with this contract; and (2) inaccessible to the public pursuant to the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court, as the same may be amended from time to time. If the CONTRACTOR receives a request to release the information referred to in this Clause, the CONTRACTOR must immediately notify the

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STATE. The STATE will give the CONTRACTOR instructions concerning the release of the information to the requesting party before the information is released.

B. STATE Programs, Databases, Marks. Without limiting paragraph A, above, CONTRACTOR agrees to the following:

1. STATE Programs. The computer application programs made available by the STATE to CONTRACTOR in order to permit CONTRACTOR to perform its obligations hereunder are referred to herein as "STATE Programs." The STATE is the copyright owner of the STATE Programs. The combination of ideas, procedures, processes, systems, logic, coherence and methods of operation embodied within the STATE Programs, and all analysis and design specifications, programming specifications, source code, algorithms, and information contained in technical reference manuals pertaining to the STATE Programs, are trade secret information of the STATE. The computer operating systems software programs and other third party software licensed by the STATE, and related documentation, made available by the STATE to CONTRACTOR in order to permit CONTRACTOR to perform its obligations hereunder, are subject to claims of trade secret and copyright ownership by the respective licensors and will be treated by CONTRACTOR in the same manner as trade secret information of the STATE. In addition, CONTRACTOR will familiarize itself with and abide by the terms and conditions of the license agreements applicable to such third party software.
2. STATE Databases. The computer databases made available by the STATE to CONTRACTOR in order to permit CONTRACTOR to perform its obligations hereunder are referred to herein as "STATE Databases." The STATE is the copyright owner of the STATE Databases and of all copyrightable aspects and components thereof. All specifications and information pertaining to the STATE Databases and to their structure, sequence and organization are trade secret information of the STATE. All information contained within the STATE Databases is sensitive, confidential information and will be treated by CONTRACTOR in the same manner as trade secret information of the STATE.
3. Marks. The STATE claims that the marks "Total Court Information System," "TCIS," "MNCIS," "CriMNet," "SJIS," and "MARS" are trademarks and service marks of the STATE or of other agencies of the state of Minnesota. CONTRACTOR shall neither have nor claim any right, title, or interest in or use of any trademark, service mark, or tradename owned or used by the STATE or other agencies of the state of Minnesota.

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4. Restrictions on Duplication, Disclosure and Use. CONTRACTOR will not, except as required in the performance of its obligations hereunder, copy any part of the STATE Programs or STATE Databases, prepare any translations thereof or derivative works based thereon, use or disclose any trade secret information of the STATE, or use any trademark, service mark, or tradename of the STATE or of other agencies of the state of Minnesota, in any way or for any purpose not specifically and expressly authorized by this contract. As used herein, "trade secret information of the STATE" means any information or compilation of information possessed by the STATE, or developed by CONTRACTOR in the performance of its obligations hereunder, which derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. "Trade secret information of the STATE" does not, however, include information which was known to CONTRACTOR prior to CONTRACTOR'S receipt thereof, either directly or indirectly, from the STATE, information which is independently developed by CONTRACTOR without reference to or use of information received from the STATE, or information which would not qualify as trade secret information under Minnesota law. It will not be a violation of this section for CONTRACTOR to disclose any information received from the STATE pursuant to the order of a court or governmental authority of competent jurisdiction if CONTRACTOR notifies the STATE immediately upon receipt by CONTRACTOR of notice of the issuance of such an order.
  5. Proprietary Notices. CONTRACTOR will advise its employees and permitted subcontractors who are permitted access to any of the STATE Programs, STATE Databases, or trade secret information of the STATE of the restrictions upon duplication, disclosure and use contained in this contract. Without limiting the foregoing, CONTRACTOR shall include in and/or on any copy or translation of, or derivative work based upon, any of the STATE Programs, the STATE Databases, or trade secret information of the STATE, or any part thereof, and any documents pertaining thereto, the same copyright and other proprietary notices as appear on the copies made available to CONTRACTOR by the STATE, except that copyright notices shall be updated and other proprietary notices added as may be appropriate.
- C. Inspection and Return of STATE Property. All documents, encoded media, and other tangible items made available to CONTRACTOR by the STATE, or prepared, generated or created by CONTRACTOR in the performance of its obligations hereunder, are and will be exclusively the property of the STATE and will be available for inspection by the STATE upon request. Upon completion of CONTRACTOR'S performance of services hereunder, CONTRACTOR will, upon the STATE'S request, promptly deliver to the STATE any or all such documents, encoded media and other items in its possession, including all complete or partial copies, recordings, abstracts, notes or reproductions of any kind made from or about

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such documents, media, items, or information contained therein. CONTRACTOR and the STATE acknowledge that all computer operating systems software programs and other third party software licensed by the STATE, and related documentation, made available by the STATE to CONTRACTOR in order to permit CONTRACTOR to perform its obligations hereunder, or any translations, compilations, or partial copies thereof are and remain the property of the respective licensors.

D. **Injunctive Relief.** CONTRACTOR acknowledges that the STATE will be irreparably harmed if CONTRACTOR'S obligations under sections VIII and IX of this contract are not specifically enforced and that the STATE would not have an adequate remedy at law in the event of an actual or threatened violation by CONTRACTOR of its obligations. Therefore, CONTRACTOR agrees that the STATE shall be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violation or breach by CONTRACTOR without the necessity of the STATE showing actual damages or that monetary damages would not afford an adequate remedy. CONTRACTOR shall be liable to the STATE for reasonable attorney's fees incurred by the STATE in obtaining any relief pursuant to this section.

E. **Facilities and Use Conditions.** Without limiting CONTRACTOR's responsibilities under any other section of this contract, to the extent that CONTRACTOR's personnel utilize STATE provided on site facilities (including, but not limited to, computers, desks, Internet connections, etc.) to perform CONTRACTOR's duties under this contract, CONTRACTOR must comply with all policies of the STATE and the judicial branch as they relate to the acceptable use or operation of STATE facilities, including, without limitation, the Minnesota State Court System Policy on the Use of the Internet and Other Electronic Communication Tools as the same may be amended and replaced from time to time.

IX. **RIGHTS IN AND TO INFORMATION, INVENTIONS, AND MATERIALS.** In consideration of the facts that CONTRACTOR'S performance under this contract will involve access to and development of information which shall be trade secret information of the STATE and may involve the development by CONTRACTOR or CONTRACTOR'S participation in the development of copyrightable and/or patentable subject matter which the parties intend be owned by the STATE:

A. All right, title, and interest in and to any trade secret information of the STATE (as defined in sections VIII (A), (B), (D) above) developed by CONTRACTOR either individually or jointly with others, and which arises out of the performance of this contract, will be the property of the STATE and are by this contract irrevocably transferred, assigned, and conveyed to the STATE free and clear of any liens, claims, or other encumbrances.

- B All copyrightable material which CONTRACTOR shall conceive or originate, either individually or jointly with others, and which arises out of the performance of this contract, shall conclusively be deemed "works made for hire" within the meaning and purview of section 101 of the United States Copyright Act, 17 U.S.C. § 101, to the fullest extent possible, and the STATE shall be the copyright owner thereof and of all elements and components thereof in which copyright protection can subsist. To the extent that any of the foregoing does not qualify as a "work made for hire," CONTRACTOR hereby transfers, assigns and conveys the exclusive copyright ownership thereof to the STATE, free and clear of any liens, claims or other encumbrances.
- C. All right, title, and interest in and to any invention which CONTRACTOR first conceives or first reduces to practice either individually or jointly, and which arises out of the performance of this contract, will be the property of the STATE and are by this contract irrevocably transferred, assigned, and conveyed to the STATE along with ownership of any and all patents on the inventions anywhere in the world, free and clear of any liens, claims or other encumbrances. CONTRACTOR agrees to disclose promptly any such invention to the STATE. This paragraph shall not apply to any invention for which no equipment, supplies, facility or trade secret information of the STATE (as defined in Sections XI (A), (B), (D) above) was used and which was developed entirely on CONTRACTOR own time, and a) which does not relate i) directly to the business of the STATE or ii) to the STATE'S actual or demonstrably anticipated research or development, or b) which does not result from any work performed or materials provided by CONTRACTOR for the STATE.
- D. CONTRACTOR will execute all documents and perform all other acts that the STATE may reasonably request in order to assist the STATE in perfecting its rights in and to the trade secret information of the STATE and the copyrightable and patentable subject matter identified herein, in any and all countries.

X. AFFIRMATIVE ACTION.

- A. Covered Contracts and Contractors. If this contract exceeds \$100,000 and CONTRACTOR employed more than forty (40) full-time employees on a single working day during the previous twelve (12) months in Minnesota or in the state where it has its principle place of business, then CONTRACTOR must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than forty (40) full-time employees in another state that does not have a certificate of compliance must certify that it is in compliance with federal affirmative action requirements.
- B. Minn. Stat. § 363A.36. Minn. Stat. § 363A.36 requires the contractor to have an affirmative action plan for the employment of minority persons, women, and

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qualified disabled individuals approved by the Minnesota Commissioner of Human Rights (“Commissioner”) as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

C. Minn. R. Parts 5000.3400-5000.3600 provide:

1. General. Minn. R. Parts 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor’s compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. Parts 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.
2. Disabled Workers. The contractor must comply with the following affirmative action requirements for disabled workers:
  - a. The contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion, or transfer, recruitment, advertising, layoff, or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
  - b. The contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
  - c. In the event of the contractor’s noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human rights issued pursuant to the Minnesota Human Rights Act.

- d. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner of the Minnesota Department of Human Rights. Such notices must state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
- e. The contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

D. Consequences. The consequences for a contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or the STATE.

E. Certification. CONTRACTOR hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600 and is aware of the consequences for non-compliance.

XI. WORKERS' COMPENSATION. In accordance with the provisions of Minnesota Statutes, Section 176.182, as enacted, the CONTRACTOR shall provide acceptable evidence of compliance with the workers' compensation insurance coverage requirement of Minnesota Statutes, Section 176.181, subdivision 2, as enacted, prior to commencement of any duties to be performed under this contract.

XII. ANTITRUST. CONTRACTOR hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations that arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

XIII. Warranties.

- A. Original Works. In performing its obligations hereunder, CONTRACTOR will not use or incorporate any trade secret information or copyrighted works of authorship of CONTRACTOR or of any third party, and except for components already in the public domain, all software, documentation, information and other materials provided or furnished by CONTRACTOR in performing the duties under this contract will be original and will not violate or infringe upon the rights of any third party.

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B. Professional Services. CONTRACTOR represents and warrants to the STATE that it has the proper training, skill and background so as to be able to perform all professional services required by this contract in a competent and professional manner, and all such work will be performed in a competent and professional manner.

C. Mutual Representations and Warranties. CONTRACTOR and the STATE each represent and warrant to the other that: a) it has the full right, power and authority to enter into this contract and to perform fully all of its obligations hereunder; b) it is free of any obligation or restriction that would prevent it from entering into this contract or from performing fully any of its obligations hereunder; and c) it has not entered into and will not enter into any contract which would impede the full performance of its obligations hereunder or would in any way limit or restrict the rights of the other under this contract.

XIV. Relationship of the Parties. CONTRACTOR is an independent contractor and shall not be deemed for any purpose to be an employee of the STATE. CONTRACTOR understands and agrees that the STATE is not withholding any taxes from the fees paid to CONTRACTOR pursuant to this contract and that CONTRACTOR is solely responsible for any taxes and other amounts to be paid as a result of the fees paid to CONTRACTOR pursuant to this contract. Neither CONTRACTOR nor the STATE shall have the right nor the authority to assume, create or incur any liability or obligation of any kind, express or implied, against or in the name of or on behalf of the other.

XV. Consent to Release of Certain Data. Under Minn. Stat. § 270.66 and other applicable law, CONTRACTOR consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the STATE, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring CONTRACTOR to file state tax returns and pay delinquent state tax liabilities, if any.

XVI. Publicity. Any publicity regarding the subject matter of this contract must identify the STATE as the sponsoring agency and must not be released without the prior written approval from the STATE'S Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for CONTRACTOR individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this contract. Notwithstanding anything in this contract to the contrary, either party may disclose to the public the existence of this contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work.

XVII. Endorsement. CONTRACTOR must not claim that the STATE endorses its products or services.

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- XVIII. Non-Exclusivity. This contract shall not preclude CONTRACTOR from developing materials outside this contract that are competitive, irrespective of their similarity to materials delivered to the STATE under this contract; provided, however, that such materials prepared by CONTRACTOR shall not violate the nondisclosure and intellectual property provisions of this contract. Nothing in this contract shall be construed as precluding or limiting in any way the right of CONTRACTOR to provide computer consulting and programming services or other services of any kind to any person or entity as CONTRACTOR in its sole discretion deems appropriate.
- XIX. Notices. Any written notice hereunder shall be deemed to have been received when: (A) personally delivered; (B) sent by confirmed facsimile transmission or telegram; (C) sent by commercial overnight courier with written verification of receipt; or (D) seventy-two (72) hours after it has been deposited in the United States mail, first class, proper postage prepaid, addressed to the party to whom it is intended at: (1) if to CONTRACTOR, the CONTRACTOR'S address set forth in the opening paragraph herein; (2) if to the STATE, the STATE'S address set forth in the opening paragraph herein, with a copy to Legal Counsel Division, 140 Minnesota Judicial Center, 25 Rev. Martin Luther King Jr., Blvd. St. Paul, MN 55155; or (3) at such other address of which written notice has been given in accordance herewith.
- XX. Non-Waiver. The failure by either Party at any time to enforce any of the provisions of this contract or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, right, remedy or option or in any way affect the validity of this contract. The waiver of any default by either Party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.
- XXI. Governing Law. This contract shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the United States of America and of the State of Minnesota, without regard to Minnesota's choice of law provisions. Any action arising out of or relating to this contract, its performance, enforcement or breach will be venued in a state or federal court situated within the State of Minnesota. CONTRACTOR hereby irrevocably consents and submits itself to the personal jurisdiction of said courts for that purpose.
- XXII. Validity. Every provision of this contract shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this contract so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed severed from this contract, and all other provisions shall remain in full force and effect.

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